

## PREFACE

### PART 1: Severability Clause

If any provision of this Growth Policy is held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Growth Policy are declared to be severable.

### PART 2: Enabling Legislation

Section 76-1-601 of Montana Code Annotated (M.C.A.) establishes the ability for all county and municipal jurisdictions in the state of Montana to prepare a growth policy, if requested by the governing body. Montana state law also states that, if requested by the governing body, the Planning Board shall prepare the Growth Policy (76-1-106, M.C.A.). The planning board may delegate to staff hired by the governing body the authority to perform “ministerial acts” (76-1-306, M.C.A.) such as drafting a growth policy. The Flathead County Planning Board worked on a growth policy from 2002 until the fall of 2004 when the monthly workload of subdivision and zoning review became too burdensome to continue both efforts. Between the fall of 2004 and October 1, 2006 the Flathead County Planning Board worked with planning staff and the advisory “Long Range Planning Task Force” to create the Flathead County Growth Policy (see Appendix B: Public Involvement Summary). On September 18, 2006, the Flathead County Commissioners passed Resolution #1976 which reiterated their desire to have the Flathead County Planning Board prepare a growth policy, pursuant to Section 76-1-601, M.C.A for adoption by the Board of Commissioners.

### PART 3: Format of the Document

The Flathead County Growth Policy is a document created to provide guidance for growth in Flathead County. The growth policy has no regulatory authority and is instead designed as a conceptual foundation for future land use decisions and is a basis for future regulations. There are words in this document that are restrictive or regulatory in nature that are not intended to be so literally interpreted as far as the intentions of a Growth Policy. Words such as “Limit”, “Prohibit”, “Require”, “Restrict”, but not limited to just those, are used in this document only as guidance in the development of other County Zoning or Subdivision Regulation documents. It is therefore critical that a growth policy be a public document, created by the public who choose to participate in the process, and used to serve the public. Montana law clearly states that a growth policy should be prepared “To ensure the promotion of public health, safety, morals, convenience or order or the general welfare and for the sake of efficiency and economy in the process of community development...” (76-1-106, M.C.A.). However, a delicate balance must be achieved to comply with the requirements of state law and also respect the custom and

culture of freedom and private property rights in Flathead County. This document attempts to achieve such a balance.

The Flathead County Growth Policy is divided into eleven chapters. Chapter 1 establishes the most important elements of life in Flathead County that were identified during the public engagement process. The identified elements of the public's vision are used to guide the entire document. Chapters 2 through 8 present existing characteristics, projected trends and goals and policies in a format that complies with the topics required by 76-1-601, M.C.A. Chapter 9 outlines an implementation strategy for the reasonable and fair use of the policies and goals set forth in all chapters. Chapter 9 also contains a statement of compliance with state subdivision regulations as required by 76-1-601(3)(h), M.C.A. The purpose, scope and format of neighborhood plans are addressed in Chapter 10. Neighborhood plans are an important tool for local planning at a level of detail that does not appear in the county-wide growth policy. Chapter 11 sets forth goals and policies for successful coordination with other jurisdictions within Flathead County. Detailed appendices documenting the existing characteristics in Flathead County in 2006 and the public involvement process in creating the growth policy follow Chapters 1-11. It is also envisioned that additional elements such as neighborhood plans will be appended as part of the Growth Policy.

All sections are presented in a discussion format that briefly covers the existing characteristics and projected trends. Maps are provided only for illustrative and educational purposes. Maps in the Flathead County Growth Policy should not be interpreted as regulatory. If a more detailed discussion or presentation of data is warranted by the topic, it is found in Appendix A: Baseline Analysis. A summary of public involvement throughout the growth policy process is found in Appendix B: Public Involvement Summary.

Successful preservation of public health, safety, morals, convenience, order, and general welfare and compliance with Chapter 1 guide the goals. The policies are suggestions for reaching the goals. Goals and policies are listed in each chapter that will guide Flathead County towards a safe and healthy future consistent with both the vision of the residents and the rights and freedoms of individuals.

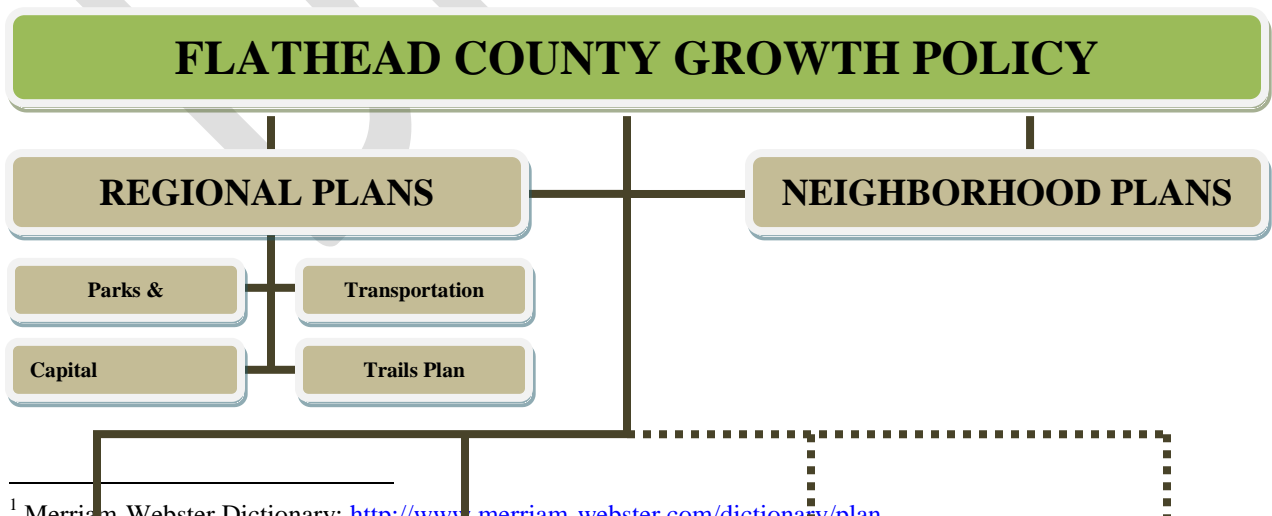
## **PART 4: User's Manual**

The Growth Policy is a comprehensive planning document that applies to all of Flathead County, excepting the incorporated cities of Kalispell, Whitefish and Columbia Falls and their respective inter-local agreement areas. The document was developed in conformance with statutory requirements set forth under Title 76, Chapter 1, Part 6 of the Montana Code Annotated (M.C.A.). Like any comprehensive plan, the Growth Policy is a living document that provides a tangible representation of what Flathead County is like today, and what the County wishes to be like in the future. As such, the Growth Policy is *not* a regulatory document (pursuant to Section 76-1-605). There are words throughout

that are restrictive or regulatory in nature, but are not intended to be so literally interpreted as far as the intentions of a Growth Policy. Words such as "Limit", "Prohibit", "Require", "Restrict", but not limited to just those, are used in this document only as guidance in the development of other County Zoning or Subdivision Regulation documents. As such, the Growth Policy provides a foundation upon which future regulations may be based.

The intent of this User's Manual is to help readers of the Flathead County Growth Policy better understand what the comprehensive planning document can and cannot do, and its relationship to other non-regulatory plans and regulations. A comprehensive plan gives overall guidance and provides a method for achieving an end.<sup>1</sup> Plans such as this are inherently non-regulatory; as a stand-alone document, a plan has no authority to restrict land use or permit development. A comprehensive plan provides the groundwork upon which regulations may be based. Regulatory documents such as the County's Subdivision or Zoning Regulations must be created in accordance with the Growth Policy<sup>2</sup>, and serve as a means of implementing specific goals, policies and concepts introduced by the comprehensive plan. These and other regulatory documents are identified as regulatory implementation methods in Appendix C, Part 2 of the Growth Policy. These documents have not been adopted as part of the Growth Policy, but are separate regulatory entities administered by the County.

Picture the Growth Policy as an "umbrella" document providing guidance to all other plans and regulations administered by the County. The following diagram provides a visual representation of the Growth Policy's relationship to both regulatory and non-regulatory documents administered throughout Flathead County. Items shaded **green** or **tan** are **non-regulatory** planning documents; items shaded **blue** are **regulatory**. Dotted lines indicate regulatory documents established under alternate provisions of the M.C.A. but that also implement specific goals, policies and text found within the Growth Policy document.



<sup>1</sup> Merriam-Webster Dictionary; <http://www.merriam-webster.com/dictionary/plan>

<sup>2</sup> M.C.A. Section(s) 76-1-605(c) and 76-1-606

**SUBDIVISION  
REGULATIONS****ZONING  
REGULATIONS****FLOODPLAIN  
REGULATIONS****LAKESHORE  
REGULATIONS**

Two non-regulatory extensions of the Growth Policy “umbrella” identified above are regional and neighborhood plans. In Flathead County, regional plans tend to focus on a specific planning issue, such as parks or transportation, providing a higher level of analysis and guidance for future land use and development decisions based on the particular topic. Neighborhood plans look at smaller geographical areas within the County, allowing community members to develop a more detailed vision for their neighborhood based upon the broader principles identified within the Growth Policy. Neighborhood plans are addressed specifically under Chapter 10 of the Growth Policy; regional plans are discussed throughout the document as appropriate and identified in Appendix C, Part 2 as non-regulatory implementation methods.

As previously stated, the Growth Policy as a stand-alone document is *non-regulatory* and does not confer any authority to regulate that is not otherwise specifically authorized by law or by regulations that have been adopted pursuant to the law [M.C.A. Section 76-1-605(2)(a) and (b)]. The Growth Policy guides how regulatory documents are created and/or updated<sup>3</sup> but cannot serve as the sole basis upon which to approve or deny a land use application. This approach has been established through case law<sup>4</sup>, a review of which indicates a County would be better served by giving due consideration to the Growth Policy, but cannot deny an application based solely on an application’s inability to comply with the document. Most land use applications submitted to the Flathead County Planning and Zoning Office are therefore reviewed for their compliance with the Growth Policy using the following regulations:

**Flathead County Subdivision Regulations**

Subdivision regulations adopted pursuant to Title 76, Chapter 3 must be made in accordance with the Growth Policy [per Section 76-1-606 M.C.A.]. The current Flathead County Subdivision Regulations have been adopted under this provision, in conformance with the Growth Policy. The regulations are intended to provide standards and procedures for the review of subdivision and other land division applications within the County. All subdivision applications are reviewed for their general conformance with goals and policies identified in the Growth Policy, pursuant to Section 76-3-504(q)(ii) and for informational purposes only. Since the subdivision regulations themselves are an implementation of the goals and policies established by the document, if a proposed development complies with the review criteria and provisions of the subdivision regulations themselves, it is inherently compliant with the Growth Policy. This ensures

<sup>3</sup> M.C.A. Section(s) 76-1-605(c) and 76-1-606

<sup>4</sup> Little v. Board of County Commissioners (1981), 193 Mont. 334, 631 P.2d 1282

proponents or opponents of a proposed development cannot rely solely upon those goals and policies that support their position in the review.

### **Flathead County Zoning Regulations**

The creation of new zoning districts, as well as amendments to existing zoning maps or text, requires compliance with the Growth Policy and/or applicable neighborhood plans. Section 76-2-203(1)(a) M.C.A. specifically states that zoning regulations *must* be made in accordance with the growth policy, as part of the required review criteria for any zoning request. The Growth Policy provides the foundation upon which zoning can be based, pursuant to Section 76-2-201 M.C.A.; in addition to goals and policies made for the purpose of promoting public health, safety, morals and general welfare, the Growth Policy designates appropriate land uses for areas of the County, upon which new zoning (or amendments to existing zoning) can be based.

### **Flathead County Floodplain Regulations**

The County Floodplain Regulations specifically apply to areas of the County within the special flood hazard areas identified by the FEMA Flood Insurance Rate Maps (FIRMs). Much like the subdivision or zoning regulations, the floodplain regulations are an implementation tool identified within Appendix C of the Growth Policy. However, the regulations were passed by Resolution No. 522 in 1984, to comply with the provisions of Title 76, Chapter 5 regarding the Montana Flood Plain and Floodway Management Act. The administration of floodplain regulations ensures the County meets the requirements for continued participation in the National Flood Insurance Program (NFIP). Participation in the NFIP allows residents of Flathead County to obtain flood insurance; without these regulations, Flathead County would no longer be eligible to participate in the program, thus limiting residents' ability to insure their properties – a requirement of many home loans. While mandated by a separate chapter of M.C.A. from that which regulates land use, this document is linked to the Growth Policy because of the Growth Policy's consideration of and specific goals and policies related to floodplain, water quality and the natural riparian resources available to the residents of Flathead County.

### **Flathead County Lake & Lakeshore Protection Regulations**

Although not specified as a component of Title 76 M.C.A., the Lake and Lakeshore Protection Regulations are identified within the Flathead County Growth Policy as an implementation tool, serving to promote public health and safety, maintain water quality and preserve public water bodies and natural resources available the citizens of Flathead County. This document was originally adopted under the authority of Section 75-7-207 M.C.A. on April 13<sup>th</sup>, 1982 and regulates development activities within twenty (20) horizontal feet of the perimeter of designated lakes (known as the Lakeshore Protection Zone), as well as activities occurring within water bodies having a minimum surface area of twenty (20) acres at least six (6) months out of the year.

## **PART 5: History of Land Use and Growth in Flathead County**



Complex growth and land use issues have a long and constantly evolving history in Flathead County. In 1855, the Bitterroot Salish, Pend d'Oreille and Kootenai tribes signed the Treaty of Hellgate, ceding 22 million acres of land that included what is now Flathead County to the federal government in exchange for retaining the Flathead Indian Reservation. Soon afterwards, news of gold in British Columbia brought the first permanent settlers to Flathead County where agricultural lands and timber reserves were abundant. Homesteaders were able to acquire property from the federal government in exchange for making the land productive. The Timber and Stone Act of 1878 allowed wealthy individuals and corporations to purchase large amounts of federal land, and the combination of homesteading and purchases from the federal government created what is now approximately 587,431 acres of private property in Flathead County.

The first mapping of the Flathead Valley occurred in the early 1870s. At that time, Montana was not yet a state, but the area that is now the State of Montana had a population of about 2,500. There were very few people living in the Flathead area until the first significant immigration of white settlers to northwest Montana which occurred in 1883, following the completion of the Northern Pacific Railroad line to Ravalli, north of Missoula. The Flathead and Lewis and Clark Forest Reserves were created in 1897 out of what is now a major portion of Glacier National Park and the Flathead National Forest. The Forest Service, created in 1905, took over the management of these lands from the General Land Office. Glacier National Park was established five years later in 1910. For a complete history of growth in Flathead County in the 20<sup>th</sup> century, see Appendix A: Baseline Analysis.

The population of Flathead County has grown in every decade but one. In 1900, the population of Flathead County was approximately 9,375 and with the exception of 1920 to 1930, that number has grown throughout the 20<sup>th</sup> century. Timber, agriculture, manufacturing and tourism have all contributed to growth in Flathead County over the last 100 years, and the Flathead economy continues to grow and diversify in 2006.

All growth historically has had impacts on the local community. The scale and speed of growth determines the impacts that are likely to occur. Some recent impacts of growth are positive, such as jobs, housing and increased property value. Other impacts, such as traffic, delayed emergency response times or incompatible land uses have been seen by residents as negative. Since 2002, when the Flathead County Planning Board first began work on the growth policy, numerous public meetings have been held throughout Flathead County to react to how residents feel about growth. The Flathead County Planning Board, along with the Flathead County Planning and Zoning Office and the Long Range Planning Task Force have used the information gathered at public meetings, as well as hundreds of letters and surveys received between 2003 and October of 2006 (see Appendix B: Public Involvement Summary), to determine the seven primary elements that are most important to the residents of Flathead County.

## **PART 6: Individual Private Property Rights in Flathead County**

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*Pursuant to 76-1-605(2)(a) M.C.A., a growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.*

Preserving and protecting the fundamentals of private property rights for the residents of Flathead County remains important in the creation of this Growth Policy as well as the administration of all land use regulations throughout the jurisdiction. As a property owner in Flathead County, you can reasonably expect the following:

1. A land owner has the right to make a land use application to the County and have that land use application reviewed according to the statutory requirements in a timely manner in accordance with due process.
2. That all rules and regulations established by the governing body shall be followed in accordance with state law.
3. That all meetings of Boards and Committees appointed by the local governing body will abide by open meeting, record retention, Americans with Disabilities Act laws and regulations established or adopted by the State of Montana.
4. That open and accountable service will be provided by the Flathead County Planning & Zoning Office as well as all departments of County government.
5. That all landowners will receive fair and equal treatment during their interaction with the County and during the review and processing of all land use applications.

Property rights are protected individual rights that guarantee a property owner's right to use his or her property as he or she wishes, limited only by a reasonable, lawful and compelling public need. Because of the increasing emphasis by the Montana courts on the "regulatory" nature of Growth Policies, any regulatory requirements that apply to the use of private property using this Growth Policy or its' amendments as its' lawful basis must meet the following requirements:

1. Must be carefully drafted to ensure the highest probability of meeting the constitutional tests of; a) ensuring substantive due process, b) providing procedural due process, c) ensuring equal protection, and d) avoid a "taking".
2. Must recognize that a key element to the custom and culture as well as the general welfare of Flathead County and its' citizens and property owners, is a strong commitment to protecting individual property rights.
3. Must be reasonably related to and must actually further the public health, safety or general welfare.
4. Must not unreasonably discriminate between similarly situated land or uses.
5. Must not be arbitrary or capricious either on its' face or as applied to a particular property and should go no farther than is required to achieve its' legitimate objective.
6. Must not have the effect of excluding racial, minority, or economic groups from the jurisdiction and must guarantee representation for all property owners.

In the event of a conflict between the provisions in this part and any other provision in this Growth Policy and its' amendments, this part shall control.

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